

**CITY COUNCIL AGENDA ITEM**  
CITY OF SHORELINE, WASHINGTON

<b>AGENDA TITLE:</b> Discussion of Ordinance No. 626 Establishing Procedures for the Disposition of Surplus Real Property and Adopting a New Municipal Code Chapter 3.55
<b>DEPARTMENT:</b> City Attorney
<b>PRESENTED BY:</b> Ian R. Sievers, City Attorney

**PROBLEM/ISSUE STATEMENT:**

The City currently has a process adopted in its municipal code for sale and disposal of surplus City-owned personal property, but does not have a similar code for disposal of surplus City-owned real property. The proposed ordinance adopts a procedure for disposal of surplus real property.

**FINANCIAL IMPACT:**

Sale of surplus property will have two positive financial benefits to the City. First, surplus property will be sold for an amount equal to or greater than its fair market value. Second, the surplus property will likely be returned to the tax rolls.

**RECOMMENDATION**

Staff recommends that Council review the proposed surplus real property policy and provide feedback to staff. The Council is scheduled to adopt the surplus real property policy through Ordinance No. 626 on January 23, 2012.

Approved By: City Manager *DT* City Attorney *IS*

## DISCUSSION

The City does not currently have a process for disposing of surplus real property owned in fee by the City. Proposed Ordinance No. 626 allows the City to properly dispose of any excess real property.

The lack of a surplus real property procedure came to light during the property acquisition stage for the Aurora Corridor Project. As part of the Aurora Corridor Project, the City has acquired in fee property remnants in excess of the needs of the project right-of-way where the remnant was determined to be uneconomic for the owner. The City wants to move forward with disposing of those pieces that have no public use.

Under the proposed ordinance, the first step in disposing of the surplus property is a public hearing to consider the surplus property declaration; all property owners within 500' of the parcel will receive direct notice of the hearing and all others will receive notice through newspaper publication.

At the hearing, staff will provide the City Council with the following information:

1. Description of the parcel and how it was obtained;
2. Historical and potential future municipal uses for the property;
3. Value of the subject parcel (determined by an appraisal) and a recommendation as to which fund the sale proceeds should be credited;
4. Whether the parcel is only usable by abutting property owners or is marketable to the larger public;
5. Whether special consideration should be given to another public agency that has use for the parcel;
6. Recommended method for selling the parcel; and
7. Recommendation on covenants or restrictions to attach to the parcel.

At the conclusion of the hearing, the City Council will determine whether to declare the property surplus, what the minimum sale price should be, whether to impose special conditions or restrictions as a condition of the sale, and the method of sale.

The property can be sold in one of four ways: (1) auction; (2) sealed bid; (3) direct negotiation with an abutting property owner; or (4) special disposition process.

The auction or sealed bid procedure should be used if the parcel is marketable to the public as a whole. If this method is utilized, the City shall post notice on the property and publish notice in the newspaper for three consecutive weeks prior to the deadline for bid submittal or the auction. All bids submitted must be accompanied by a bid deposit equal to 5% of the bid or \$5,000, whichever is greater. This bid deposit is non-refundable in the event the sale falls through.

Direct negotiation should be used if the property can only be put to its highest and best use when aggregated with an abutter's property because of its size, shape, topography or other restriction. If more than one abutter expresses interest in the property, then the City will rely on the sealed bid procedure. Earnest money of \$5,000 or 5 % of the bid,

whichever is greater, shall be deposited into escrow opened for negotiated purchase and is non-refundable if the sale fails to close.

The special disposition process should be utilized for properties where the reasonable return is outweighed by the public benefit, due to factors such as the unique character or development potential of the property. Under this process, the Council may require Request for Proposals, sale by direct negotiation, options to purchase, lease-purchase transactions or any other commercially reasonable means of disposal.

Proposed Ordinance No. 626 also incorporates intergovernmental transfers of real property, which is covered under a separate state statute, Chapter 39.33 RCW. The procedure allows for sale of the property to another governmental entity rather than a sale on the public market, if the criteria for special disposition under the ordinance are satisfied. The City Council's consideration of the sale is essentially the same as the procedure set forth above. Finally, the ordinance references sale of property originally acquired for utility purposes; such property must be sold for fair market value under RCW 35.94.040.

### **RECOMMENDATION**

Staff recommends that Council review the proposed surplus real property policy and provide feedback to staff. The Council is scheduled to adopt the surplus real property policy through Ordinance No. 626 on January 23, 2012.

### **ATTACHMENT**

Attachment A: Proposed Ordinance No. 626

**ORDINANCE NO. 626**

**AN ORDINANCE ESTABLISHING PROCEDURES FOR THE DISPOSITION OF SURPLUS REAL PROPERTY AND ADOPTING A NEW MUNICIPAL CODE CHAPTER 3.55**

Whereas, the City has acquired property remnants as part of its Aurora Corridor Project that were in excess of the needs of the project right of way; and

Whereas, the City should adopt a process for disposing of these and other properties owned by the City if they have no public use so they may be returned to the tax rolls while balancing economic development, fairness to purchasers and return to the City from the sale, and

Whereas, adoption of procedural ordinances are exempt from SEPA under 197-11-800(19); now therefore

**THE CITY COUNCIL OF THE CITY OF SHORELINE, WASHINGTON DO ORDAIN AS FOLLOWS:**

**Section 1. New Chapter.** A new chapter, Chapter 3.55, *Sale and disposal of real property*, is hereby adopted to read as follows:

**3.55.010 Policy and Procedures for Disposition of City-Owned Real Property**

A. Policy. The City Council declares that it is in the public interest and the policy of the City to dispose of all real property in which the City holds a fee interest, where such property is surplus to its current or future needs, and where such disposition would afford the City a reasonable return from the transaction. For purposes of this Chapter, “reasonable return” means sale at an amount equal to, or greater than the fair market value (see subsection 3.55.012). For purposes of this Chapter, “surplus property” means both real property for which the City has no current or future need, as well as real property, which, if disposed of, would be put to a higher or better use for the community at large.

B. Procedures. Real property declared surplus may be disposed of for a reasonable return by any of the procedures of this chapter unless: (1) the property is authorized for Special Disposition Process by the City Council; or (2) the property was originally acquired for public utility purposes, in which case it shall be sold for fair market value pursuant to RCW 35.94.040.

C. Special Disposition Process. In cases where the public interest in a reasonable return is outweighed by the public benefit, due to factors such as the unique character or development potential of a given property, the City Council may designate such property for disposal by a Request for Proposals, sealed bid, options to purchase, lease-purchase transactions, or other commonly used, commercially reasonable means of disposal. If an intergovernmental transfer is considered for a special disposition process this chapter shall be supplemented with procedures of Chapter 39.33 RCW.

### **3.55.011 Surplus Property Declaration**

A. Real property owned by the City may be declared surplus by the City Council after the following procedures have been completed:

1. The City Manager shall include the following information in the staff report to Council for each parcel under consideration:

- (a) Description of the subject parcel's size, general location, and legal description;
- (b) Description of the circumstances under which the subject parcel was obtained;
- (c) Description of what funds were used to initially acquire the subject parcel;
- (d) Recommendation as to which fund the proceeds from its sale should be credited;
- (e) History of municipal use, if any, for uses for which it might be held;
- (f) Value of the subject parcel and whether further appraisal before sale is recommended and the type of appraisal required (see Section 3.55.012, A.2.);
- (g) Whether the subject parcel is only usable by abutting owners or is marketable;
- (h) Whether special consideration ought to be given to some other public agency that has a use for the subject parcel;
- (i) Whether the subject parcel should be sold at auction, by sealed bid, or by negotiation;
- (j) Recommendation as to whether any special covenants or restrictions should be imposed in conjunction with sale of the subject parcel.
- (k) For land acquired for public utility purposes, whether the land is no longer required to provide continued public utility service.

2. A public hearing shall be held to consider the surplus declaration for the subject parcel. Notice of said hearing shall be published in the City's official newspaper and mailed to all property owners within 500' of the subject parcel not less than 10 days nor more than 25 days prior to the hearing.

B. Following the public hearing, the Council shall determine whether the subject parcel shall be declared surplus. Any declaration of surplus property shall be made by resolution. The resolution shall also make the following determinations:

- 1. Whether the subject parcel should be sold by sealed bid, at auction, or through negotiated sale;
- 2. Whether special covenants or restrictions should be imposed as a condition of the sale; and
- 3. The minimum acceptable price, in accordance with Section 3.55.010(B) and Section 3.55.012.

### **3.55.012 Sale Procedure**

The following procedures and requirements shall apply to the sale of surplus property:

A. Determination of Value/Minimum Acceptable Price.

- 1. If the City has a sufficient and acceptable appraisal of the subject property

no additional appraisal shall be required.

2. If an acceptable appraisal is not available, the City Manager shall obtain:
  - a. Limited opinion of value for properties under \$25,000;
  - b. Short form appraisal report for properties under \$50,000; or
  - c. Full narrative appraisal report.

B. Sale by Bid or Auction. In the event the subject parcel is to be disposed of by sealed bid or by auction, the following notification procedures shall be followed:

1. A notice of the City's intent to dispose of the subject parcel shall be conspicuously posted on the property no less than two weeks prior to the date set for the close of bids or the date set for the auction.

2. Notice shall be published in the City's official newspaper at least once each week for three consecutive weeks preceding the deadline for the submittal of sealed bids or the public auction. All notices shall include a description of the subject parcel, the procedure by which the subject parcel is to be disposed of, any earnest money deposits which must be made and the minimum price that will be accepted.

C. Negotiated Sale. If the subject parcel can only be put to its highest and best use when aggregated with an abutter's property because of its size, shape, topography, or other restriction, the subject parcel may be negotiated for sale to the abutter, provided:

1. The abutter is willing to purchase for the fair market value of the subject parcel as determine under subsection A;

2. If more than one qualifying abutter expresses interest in purchasing the subject parcel, the City Council may solicit sealed bids from all; and

3. A person shall not be deemed to be an abutter if a right-of-way separates his property from the subject parcel unless purchase will allow a higher and better use of the abutter's property.

D. Earnest Money/Time to Closing.

1. Disposition by Sealed Bid or Auction. Where a subject parcel is sold by sealed bids or auction, any and all bids submitted must be accompanied by a bid deposit in the form of a cashier check payable to the City of Shoreline in the amount of 5% of the bid or \$5,000 whichever is greater. Such deposit accompanying the successful bid shall be deposited into an administrative trust account until closing on the purchase of the parcel and payment of the remaining amount of the purchase price shall be made within 30 days. In the event the purchaser is unable to pay the remaining amount within the required time, the earnest money deposit shall become non-refundable as liquidated damages provided, however, that the purchaser may deposit an additional \$5,000 extension fee , in which case the time to make full payment shall be extended for an additional 30 days. In the event full payment is not made by the conclusion of the additional period, all deposits shall be retained as liquidated damages for lost time and expense. The City Council reserves the right to waive any irregularities in the bid process.

2. Disposition by Negotiated Sale. Where property is sold by negotiated sale, the purchaser shall deposit earnest money into escrow in the amount of \$5,000 or 5 percent whichever is greater within 3 business days of execution of a purchase and sale agreement for the purchase of the subject parcel. Earnest money forfeitures and sale extensions under subsection 1 shall apply;

E. Form of Conveyance. All conveyances shall be made by quitclaim deed.

F. Closing Costs. All closing costs, exclusive of deed preparation, shall be borne by the purchaser including, but not limited to, survey work, title insurance if desired, recording costs, and escrow fees if applicable.

**ADOPTED BY THE CITY COUNCIL ON January 23, 2012.**

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Mayor Keith A. McGlashan

**ATTEST:**

**APPROVED AS TO FORM:**

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Scott Passey  
City Clerk

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Ian Sievers  
City Attorney

Publication Date:  
Effective Date: